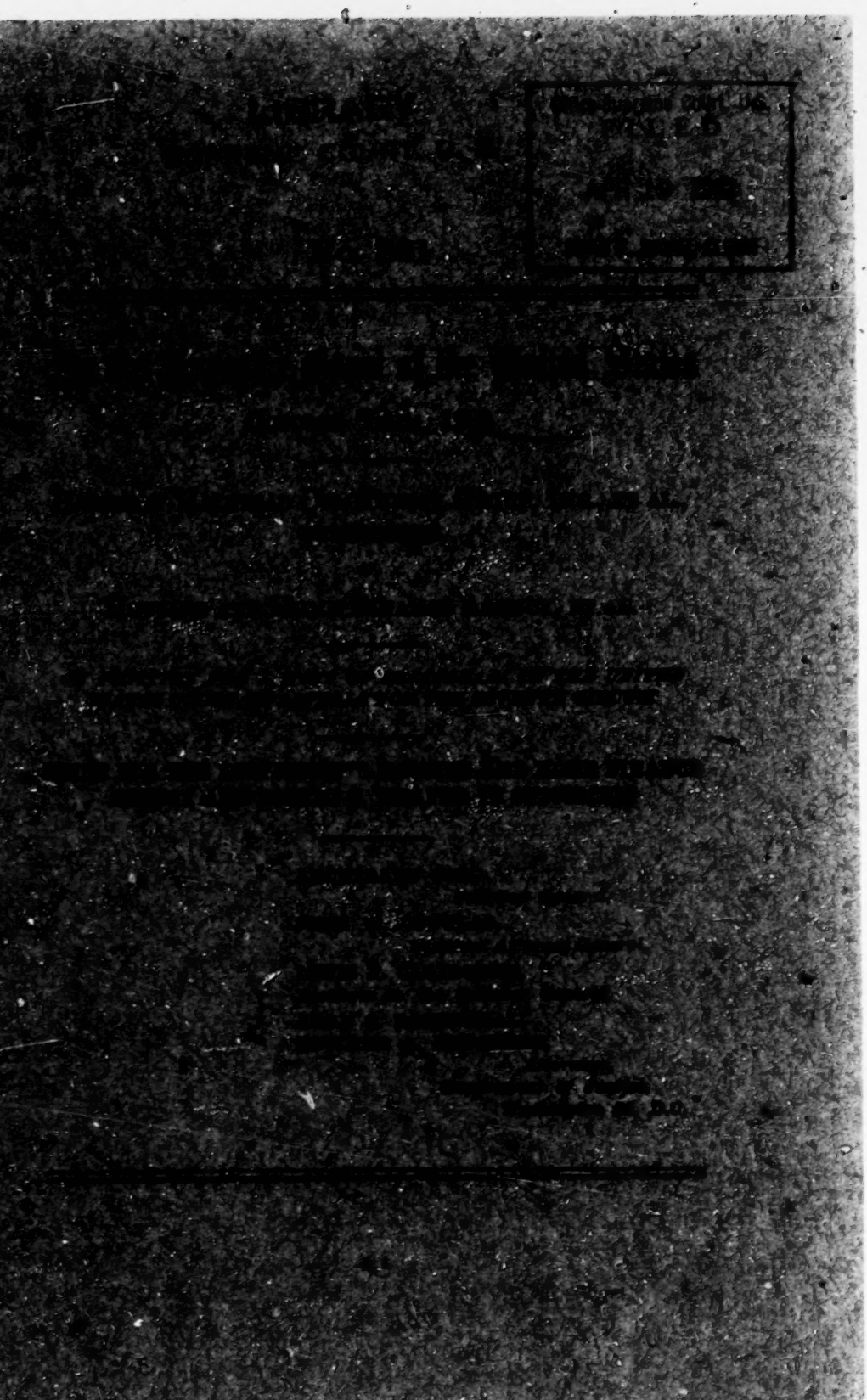

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 861

HARRISON-HALSTEAD COMMUNITY GROUP, INC., ET AL.,
PETITIONERS

v.

HOUSING AND HOME FINANCE AGENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS HOUSING AND HOME FINANCE AGENCY AND ROBERT C. WEAVER IN OPPOSITION

OPINIONS BELOW

The opinions of the United States District Court for the Northern District of Illinois (Pet. App. 15a–21a) are not reported. The opinion of the United States Court of Appeals for the Seventh Circuit (Pet. App. 1a–13a) is reported at 310 F. 2d 99.

JURISDICTION

The judgment of the Court of Appeals was entered on November 28, 1962. The petition for a writ of certiorari was filed on February 25, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether property owners, residents and businessmen of an urban renewal area redeveloped by local agencies and partially financed by federal funds have standing to assert alleged violations of the Housing Act of 1949.

STATUTES INVOLVED

The relevant provisions of the Housing Act of 1949, as amended, 42 U.S.C. 1441–1462, are reprinted in petitioners' separately bound Appendix, pp. 39a–56a.

STATEMENT

This action was instituted by petitioners, a nonprofit corporation organized for the protection of the interests of the Near West Side Neighborhood of Chicago and 280 individuals, most of whom are property owners, small businessmen or residents of the area. They seek to enjoin the local authorities from proceeding further with an urban renewal project involving the neighborhood and also ask that the Housing and Home Finance Agency (HHFA) and its Administrator be restrained from continuing the federal government's financial participation in the project under the Housing Act of 1949, 63 Stat. 413, 42 U.S.C. 1441 *et seq.*

The original impetus for the redevelopment of the Near West Side Neighborhood came from residents and property owners in that area. Recognizing that portions of the area had seriously deteriorated and were in need of renewal, they formed a voluntary civic organization, the Near West Side Planning Board (Pet. App. 3a). In September, 1956, in part

as a result of their activities, a parcel of land in the Near West Side, the Harrison-Halstead Tract, was designated as a slum and blighted area (*Ibid.*). Earlier, in May of 1956, most of the balance of the neighborhood had been designated as a conservation area to be redeveloped by rehabilitation and spot clearance (*Ibid.*).

On January 16, 1958, the Chicago Land Clearance Commission adopted the Harrison-Halstead Redevelopment Plan, which provided for the clearance of most of that tract and its redevelopment as a residential area for families of moderate income (*Ibid.*). This plan subsequently was approved by the City, the State Housing Board and the HHFA. On May 16, 1958, the HHFA entered into a contract with the Land Clearance Commission to provide financial assistance to the project, and much of the land had been cleared by mid-1960 (*Ibid.*).

In 1960, however, the City began to consider the possibility of using the tract as a campus site for the University of Illinois (Pet. App. 4a). On February 10, 1961, the Mayor of Chicago publicly announced that he had reached an agreement with the University trustees to situate a campus on the Harrison-Halstead Tract and on two adjacent areas, the Roosevelt-Blue Island and Congress-Racine tracts (Pet App. 4a). On March 29, 1961, the Chicago Land Clearance Commission designated the two additional tracts as slum and blighted areas and adopted plans to redevelop the Roosevelt-Blue Island Tract and about half of the Congress-Racine Tract as a campus site, with the remaining portion of the latter tract to be used

for private housing (Pet. App. 5a). Further, it amended the Harrison-Halstead Redevelopment Plan to provide that, except for three acres, that area also would be used by the University (Pet. App. 5a).

On April 13, 1961, the Planning and Housing Committee of the Chicago City Council conducted public hearings on the new plans (Pet. App. 5a). Objectors were permitted to appear and make statements, but they were not given a right to subpoena witnesses or documents, or to cross-examine City officials (*Ibid.*). Thereafter, the City Council and the State Housing Board approved the urban renewal plans and forwarded them to the HHFA for final approval (Pet. App. 5a–6a). Objectors filed briefs with the HHFA, arguing against approval of the plans. On March 21, 1962, the Administrator approved the projects as conforming to the requirements of the Act, and entered into loan-and-grant contracts with the City (Pet. 6a).

On April 17, 1962, the Land Clearance Commission filed its first condemnation suit, and three days thereafter the petitioners instituted the instant action, contending that the HHFA Administrator had erred in approving the project plans (Pet. 7a). Specifically, petitioners urged that the Administrator and the City had not complied with Section 105 of the Public Housing Act, 42 U.S.C. 1455, in three respects: (1) the urban renewal plan under consideration did not conform to a general plan for the development of the locality as a whole (sub-section (a)(iii)); (2) there was no "feasible method" for the temporary

relocation of families displaced from the urban renewal area (sub-section (c)); and (3) a trial-type "public hearing" was not held (sub-section (d)). In support of their claim to a trial-type hearing, they also invoked the due process clauses of the Fifth and Fourteenth Amendments. In addition, they alleged other violations of the Act not pressed here.

The district court dismissed the original complaint (Pet. App. 22a–34a) and a supplemental complaint (Pet. App. 15a–21a) for lack of a substantial federal question. On appeal, the court of appeals affirmed, holding that petitioners lacked standing to maintain this action because they had not established that the acts of respondents constituted an invasion of their private legal rights.

While the present suit was *sub judice*, the condemnation actions instituted by the City were proceeding in the Illinois State courts. Shortly after the Court of Appeals for the Seventh Circuit affirmed the dismissal of the instant complaint, the Supreme Court of Illinois rendered its decision in one of the related state court suits, rejecting the plaintiffs' contentions. That opinion is reprinted in the Appendix to the Supplement to Petition for Writ of Certiorari. The state court litigation is pending here on appeal. *Gonzalez* v. *City of Chicago*, No. 984, this Term.

ARGUMENT

By this action, petitioners seek to arrest an urban renewal project which has long since been approved by the City of Chicago, the State of Illinois, and the

federal Housing and Home Finance Agency, and which is already nearing completion. They do not dispute the power of the local agencies to undertake the project or the authority of the federal agency to give financial assistance. Nor do they now contend that the change in the renewal plan invalidates it. But they say, in substance, that the undertaking was accomplished without proper regard for their interests as the people most directly affected.

Accepting petitioners' complaint as true (as we must for present purposes), we cannot say that it fails to allege injury. Yet, it must be remembered that the City Council of Chicago approved the project after hearing their objections and that the HHFA Administrator approved it after considering their opposing briefs. Moreover, all those who are property owners have had, or will have, full compensation in the state court proceedings. The only question here is whether petitioners are entitled to judicial examination of their complaints in the federal courts on the ground that the Housing Act was allegedly violated.

After fully reviewing the question of standing and exploring the claimed conflict in decisions, considering the need for this Court's intervention, and weighing the enormous consequences of further delay against the slim prospect of ultimate practical benefit to the petitioners, we have concluded that we should urge the Court to deny the petition for certiorari.

A. The issue of standing and the alleged conflict of decisions

In its present posture, the only real issue in this case is that of standing to sue. Indeed, except for a single insubstantial constitutional claim,[1] the entire controversy can be disposed of on the basis of petitioners' lack of standing to assert alleged violations of the Housing Act of 1949. As we read its opinion, that is precisely the holding of the court of appeals below. And, in our view, the decision is correct. Nevertheless, because the question of standing is here presented in a somewhat novel context and dismissal of certain of the claims on this ground encounters apparent difficulties, we examine the issue in some detail. While all the claims arise under the same statute, they seem to fall into three distinguishable categories.

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[1] Petitioners say that the due process clauses of the Fifth and Fourteenth Amendments guarantee them a trial-type hearing on the issue whether the project area is in fact a "slum or blighted area" because such a designation depresses property values (Pet. 22–32). The claim, it seems to us, is foreclosed by this Court's ruling in *Berman* v. *Parker*, 348 U.S. 26. The redevelopment law there upheld provided only for a general legislative hearing. *Id.*, at 29; D.C. Code (1951), § 5-705(b)(2). And, at the same time, the Court emphasized the primarily legislative responsibility in this area, the broad discretion of the administration authorities, and the very limited scope of judicial review. The upshot is that there is no constitutional right to a full adversary hearing in the premises. In any event, petitioners have no cause for complaint in this instance. For the decision of the Illinois Supreme Court (Pet. Supp.) makes it clear that the administrative designation of an area as "slum and blighted" is not final and may be contested in the judicial proceedings incident to condemnation.

1. There are, at the outset, certain complaints about the Administrator's action or non-action which the petitioners, as property owners, residents and businessmen of the renewal area, have no special standing to raise. Thus, their connection with the project area gives them no peculiar interest in securing compliance with the provision of the Housing Act which requires the urban renewal plan to "conform to a general plan for the development of the locality as a whole" (42 U.S.C. 1455(a)(iii)), or with the provision which is said to bar a radical modification of the renewal plan once approved (42 U.S.C. 1456(c)(6)). For these statutory limitations (insofar as they exist) are plainly not intended for the special protection of those who will be displaced. On the contrary, like others not here involved, these provisions are included for the benefit of the government, or the public at large, or, at least, for the protection of the affected community as a whole. While failure to comply may, as it turns out, hurt some residents of the city and not others, the fact remains that the provisions cannot be said to have been designed for the protection of any definable group smaller than the entire community, and, since injury alone does not confer standing, those in the affected area are in no better position to complain about the violation than any other member of the public.

As to the claims in this category, applicable decisions of this Court seem to have settled petitioners' lack of standing to maintain a court action. As mere members of the city community, their interest is too

remote. Cf. *Frothingham* v. *Mellon*, 262 U.S. 447. Nor is standing conferred because the alleged violation may actually have injured them. *Tennessee Power Co.* v. *TVA*, 306 U.S. 118, 143; *Alabama Power Co.* v. *Ickes*, 302 U.S. 464. On this point, the lower courts are in complete agreement. With particular reference to the Housing Act, every decision reaching the question denies standing to assert noncompliance with provisions not plainly intended for the protection of a distinct class of which the complainants are members.[2]

2. In our view, the same considerations govern even when the violation charged involves a provision admittedly inserted for the benefit of the would-be plaintiffs, *e.g.*, the requirement that there be a "feasable method for the temporary relocation of families displaced from the urban renewal area" (42 U.S.C.

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[2] *Pittsburgh Hotels Ass'n, Inc.* v. *Urban Redevelopment Auth.*, 309 F. 2d 186 (C.A. 3), affirming 202 F. Supp. 186 (W.D. Pa.), certiorari denied *sub. nom. Hilton Hotels Corp.* v. *Urban Redevelopment Authority*, 372 U.S. 916; *Gart* v. *Cole*, 263 F. 2d 244, 250 (C.A. 2), certiorari denied, 359 U.S. 978; *Taft Hotel Corp.* v. *Housing and Home Finance Agency*, 262 F. 2d 307 (C.A. 2), affirming 162 F. Supp. 538 (D. Conn.); *Allied City Wide* v. *Cole*, 250 F. 2d 827 (C.A.D.C.)

The argument that section 10(a) of the Administrative Procedure Act, 5 U.S.C. 1009(a), confers standing on anyone "adversely affected or aggrieved" by administrative action, even when the underlying statute does not so provide, has been consistently rejected. See, e.g., *Kansas City Power & Light Company* v. *McKay*, 225 F. 2d 924, 931-933 (C.A.D.C.), certiorari denied, 350 U.S. 884. With particular reference to the Housing Act, the courts are unanimous in denying the claim. *Gart* v. *Cole*, *supra*, at 250-251; *Taft Hotel Corp.* v. *Housing and Home Finance*, 162 F. Supp. 538, 540 (D. Conn.). The ruling below is the same. Pet. App. 9a-10a.

1455(c)), or the requirement that the local agency hold a "public hearing" before acquiring the land (42 U.S.C. 1455(d)).

At first blush, it may seem harsh to say that someone whom Congress has sought to protect, and who in fact suffers because the legislative mandate is ignored, has no standing to complain. Yet, that is often the case. Indeed, this Court has indicated that the employees of government contractors have no standing to enforce judicially the statutory guarantee of minimum wages. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 131. The reason is that, in the absence of some clear indication that judicial remedies were contemplated, Congress cannot be presumed to have encouraged "'[t]he interference of the Courts with the performance of the ordinary duties of the executive departments of the Government, [which] would be productive of nothing but mischief.'" *Id.*, at 131–132, quoting from *Decatur* v. *Paulding*, 14 Pet. 497, 516. The conclusion that Congress meant to do its own policing is especially justified when the function is one that does not readily lend itself to judicial review. And certainly this is true of urban renewal. See *Berman* v. *Parker*, 348 U.S. 26.

Thus, here, we do not read the congressional purpose to encourage urban renewal, and, incidentally, to protect the inhabitants of the project area, as designed to confer upon them judicially enforcible rights. At least there would seem to be no right of action against the federal administrator who deals only with the local agency and is a remote stranger to the affected residents. But, however convinced

we may be that here, also, petitioners lack standing, we recognize that the question with respect to claims in this category is arguably different. Moreover, we must answer the claim that there is a conflict of decisions in this area.

The serious allegation of conflict is that the decision below is inconsistent with the holding of the Court of Appeals for the Second Circuit in *Gart* v. *Cole*, 263 F. 2d 244.[3] On analysis, we conclude that the disagreement, if it exists, does not involve all the claims falling into this broad category. A further separation is justified.

The distinction is illustrated by considering, on the one hand, the claim made in *Gart* v. *Cole*, that the Act gives the displaced residents a right to be heard by the Administrator before he approves the project, and, on the other hand, the present claim that the relocation program does not conform to the standards required by the federal statute and regulations. Certainly, in the first case, the arguments in favor of recognizing standing to require compliance are much stronger, for the statutory provision itself might arguably confer a legal right to demand the

[3] *Barnes* v. *City of Gadsden*, 268 F. 2d 593 (C.A. 5), certiorari denied, 361 U.S. 915, and *Blachman* v. *Ericview Corp.*, 311 F. 2d 85 (C.A. 6), certiorari denied, March 18, 1963 (No. 772, this Term), cited by petitioners in support of their claim of conflict (Pet. 21), are plainly distinguishable. The standing of the plaintiffs in the first case (which the court does not discuss) is obviously premised on the *constitutional* claim asserted; no violation of the Housing Act was alleged. See 174 F. Supp. 64 (N.D. Ala.). And in *Blachman* the finding of standing was expressly based on a provision of the Cleveland City Charter. See 311 F. 2d at 85–86.

hearing. Moreover, the *Gart* complaint, unlike that here, alleged a deprivation of procedural rights, an order of claim peculiarly appropriate for judicial consideration and one which may be cognizable even when the merits of the administrative action is not open to judicial review. See, *e.g., Service* v. *Dulles*, 354 U.S. 363, 373; *Vitarelli* v. *Seaton*, 359 U.S. 535, 540. Thus, in our view, there is no conflict, even in principle, between *Gart* v. *Cole* and the decision below, insofar as the one recognizes standing to assert a claimed statutory right to a hearing and the other denies standing to complain about the adequacy of the relocation program.

There remains, it is true, the holding of *Gart* v. *Cole* that the displaced residents had standing to assert the Administrator's failure to review personally the sufficiency of the relocation program (a responsibility he had allegedly delegated to the local agency). See 263 F. 2d at 251. Superficially, this claim is close to the one made here with respect to the adequacy of the relocation program. But, when we examine the distinct provisions invoked in the two cases (§ 1451(c)(iv) in *Gart*, § 1455(c), here), and the differing contexts in which the respective violations are asserted, it becomes clear that the complaints are of a different order. The claim in *Gart* was really a diluted version of the contention before the local residents were denied a hearing before the Administrator: the argument was that, if he need not decide the relocation question on the basis of a hearing, he must at least decide it for himself. This

is another *procedural* due process claim. Not so here: petitioners' claim goes to the merits of the relocation plan and its compliance with the *substantive* standards announced in the statute and the HHFA Manual.

3. We have discussed all of petitioners' complaints with respect to the Housing Act, except two. These are (1) the contention that they were denied an opportunity to be heard, as contemplated by the statute (see 42 U.S.C. 1455(d)), on the issue whether two of the tracts involved were properly designated "slum and blighted areas", and (2) the further claim that the designation was made without "good-faith fact-finding," said to be implicitly required by the Act (42 U.S.C. 1460(a), 1460(c)(1), being the provisions invoked). While these complaints directly charge violations by the *local* agency, rather than the federal administrator, and involve different provisions of the act, we acknowledge their kinship to the procedural claims asserted in *Gart* v. *Cole*. Accordingly, it may rightly be said that *Gart* (which sustained standing on similar issues) and the decision below (which denied standing with respect to these claims) are inconsistent to this extent. But, if a narrow conflict subsists, there is no occasion to resolve it here, for the procedural due process complaints asserted in this case are as plainly frivolous as those put forward and rejected in *Gart*.

The suggestion that the Housing Act requires a fuller hearing than was accorded here is clearly without merit. The section invoked, 42 U.S.C. 1455(d)

merely guarantees that the local agency shall hold a "public hearing" before the land is "acquired." There is no basis for supposing a trial-type hearing was contemplated. On the contrary, every indication is that the provision intends to assure a legislative hearing, at which everyone "who has an interest" shall be afforded "a right to come in and be heard." See 95 Cong. Rec. 8541, 8549. Nor is the Act concerned with the date of the hearing; so long as it precedes acquisition, the requirement is satisfied. Plainly, the statutory mandate was fulfilled in this particular.

The further claim with respect to the designation of the Roosevelt-Blue Island and Congress-Racine tracts as "slum and blighted areas" without "good-faith fact-finding" is equally insubstantial. Admittedly, an open hearing involving that question was held. There is nothing in the federal statute which suggests that more is required. The provisions invoked merely restrict an urban renewal project (except with respect to open land) to "a slum area or a blighted, deteriorated or deteriorating area." 42 U.S.C. 1460(a), 1460(c)(1). But even if the local renewal authorities failed to make a sufficient investigation, the factual issue remains open in the state condemnation proceedings and there is no occasion to consider it here. Indeed, in the related state case now pending on appeal in this court (*Gonzalez* v. *City of Chicago,* No. 984, this Term), the Supreme Court

of Illinois has finally determined that one of the two areas involved here was a "slum and blighted area." See Supplement to Petition for Certiorari in this case.

B. The importance of the issue and the necessity for definitive resolution

Undeniably, the question of standing to assert violations of the Housing Act is of substantial importance to all those involved—the residents of the affected area, the local agencies, and the federal Housing and Home Finance Administration. Indeed, from the government's viewpoint, a holding generally recognizing standing to sue would have very serious consequences. For there are currently some 1200 federally-financed urban renewal projects in process in 650 localities spread over 42 States, the District of Columbia, Puerto Rico and the Virgin Islands. And three billion dollars in federal funds have been committed to date.

But it does not follow that this Court should hasten to intervene. The fact is that decisions of this Court already foreclose the great majority of the possible claims under the Housing Act. And, as to most of the rest, the lower courts, as we have seen, are in virtual agreement that judicial review is not available to private parties. No conflict in result exists, nor any embarrassing disagreement in principle which requires resolution by this Court.

C. The appropriateness of this case as a vehicle and the practical consequences of further delay

Petitioners correctly emphasize that this case presents the question of standing uncluttered by the factual issues that might be introduced by a trial on the merits. We do not agree, however, that it presents an appropriate occasion for this Court's intervention.

In the first place, we note that certain of the claims can be disposed of without reaching the question of standing. As we have seen, this is the case with respect to the only area as to which there is some disagreement among the lower federal courts. Also, the proliferation of claims under the Housing Act and the joinder of both federal and local agencies as defendants tends to confuse the issue. For it may well be that some of the complaints are properly asserted against one defendant but not another. Moreover, it is not always clear who is charged with the statutory violation, whether the local agency for allegedly failing to satisfy the standards of the federal enactment, or the federal administrator for failing to require compliance by the local authorities. And, finally, the violations themselves are alleged with such elaborate circumspection that it is sometimes questionable whether the complaint is not too subtle for judicial cognizance, even assuming standing to sue.[4]

[4] That was, in effect, the view of the district judge. See *e.g.*, Pet. App. 31a-32a (Opinion on Order dismissing Original Complaint); Pet. App. 19a (Opinion on Order dismissing Amended Complaint).

Other and perhaps more important practical considerations counsel against testing the issue of standing in this case. One cannot overlook the enormous consequences of halting the present project at this late stage. One of the areas involved, the Harrison-Halstead tract, is now almost fully cleared. Commitments have been made. Federal funds totalling almost 3 million dollars have already been expended. A reversal of the plan, or even a prolonged delay, would result in extravagant waste and serious economic injury to innocent third parties. What is more, all this would be done without really advancing the petitioners' cause. It is very doubtful that, on the merits, they could prevail. But, even if it were otherwise, it is difficult to see what practical relief petitioners could obtain at this point. We do not suggest that the rights of private claimants, if they have any in the premises, should be disregarded merely because a great public endeavor is involved. But neither can we properly ignore the "confusion and disorder" that will ensue if the program is further held up. *Perkins* v. *Lukens Steel Co.*, *supra*, 310 U.S. at 130–131. The interests of the government (including the state and local governments and instrumentalities, as well as the United States), of the taxpayers and of the investors must also be considered. In this instance, it seems to us proper to weigh heavily in the scales the public cost of vindicating dubious private claims which, for the most part, have been mooted by the march of events.

CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted.

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APRIL 1963.